IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 3617 of 2005

Between:

Syed Asgar S/o Syed Anwar, R/o 1-6-872, Ramnagar, Musheerabad, Hyderabad

..... PETITIONER

AND

1.The Government of Andhra Pradesh rep by its Principal Secretary, Home Department, A.P. Secretariat, Hyderabad
2.The Director General and Inspector General of Police, Lakdi-ka-pul, Hyderabad
3.The City Commissioner of Police, Hyderabad, Basheerbagh, Hyderabad
4.The Inspector of Police, Central Crime Station, Control Room, Hyderabad
5.The Station House Officer, Musheerabad, Police Station, Musheerabad, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more in the nature of a Writ of Mandamus by declaring action of the Respondents in registering Crime No. 115 of 2004 on the file of Central Crime Station, Hyderabad on a fax message and not dropping the complaint in spite of receiving the letter dated 3-1-2005 from the consulate General of India, Jeddah, as arbitrary, illegal without jurisdiction and consequentially direct the respondents to drop the proceedings against the petitioner and to pass such other order or further orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.K.G.K.PRASAD

Counsel for the Respondent Nos.1 to 5: GP FOR HOME

The Court made the following:

THE HONOURABLE SRI JUSTICE D.S.R.VARMA

W.P.NO.3617 OF 2005

ORAL ORDER:

Heard both sides.

2 . The petitioner seeks a declaration that the action of the respondents in registering a case in Crime No.115 of 2004 on the file of the Central Crimes Station, Hyderabad on a fax massage and not dropping the complaint in spite of receiving a letter, dated 03-01-2005, from the Consulate General of India, Jeddah, as arbitrary, illegal and without jurisdiction and for a consequential direction to the respondents to drop the proceedings against the petitioner.

3. The factual matrix seems to be that the petitioner was an employee of one Baharoon Development Corporation, situated at Jeddah,

Saudi Arabia. He came to India as a citizen because of his personal reasons. After some time, a complaint has been lodged against the petitioner by an authorized representative of that company for the offences punishable under Sections 120-B, 468, 471, 403, 408, 420 I.P.C. read with 109 I.P.C. before the Inspector of Police, Central Crime Station, Hyderabad – 5th respondent herein and a case in Crime No.32 of 2004 was registered. Later, the same was transferred to the 4th respondent herein and the case was reregistered as Crime No.115 of 2004 and investigation was taken up and the same was being investigated. Challenging the said complaint, the consequential investigation and other actions of the respondents in asking the banks to squeeze the accounts of the petitioner etc., the present writ petition is filed.

4. Mr.N.Subba Reddy, the learned Senior Counsel appearing on behalf of the petitioner, submits that as per Section 188 of the Code of Criminal Procedure, the petitioner cannot be tried nor the offences alleged can be enquired into by the investigating agency unless the previous sanction of the Central Government is obtained.

5. For ready reference, Section 188 is extracted, which is as under:

"188. Offence committed outside India:-- When an offence is committed outside India:--

(a).by a citizen of India, whether on the high seas or elsewhere, or

(b).by any person, not being such citizen, on any ship or aircraft registered in India,

he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found;

Provided that, not withstanding anything in any of the preceding Sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."

6. The provisions of Clause (a) of Section 188 deals with a citizen allegedly committed an offence on a foreign soil. It further makes abundantly clear that no offence shall be enquired into or tried in India except with the previous sanction of the Central Government.

7. Sri O.Kailasanatha Reddy, the learned Amicus Curiae, appointed by this Court orally, points out that Section-181 deals with the place of trial in case of certain offences by a Court within whose local jurisdiction the offence was committed or the accused person is found that though an offence is committed in a foreign country, the consequences which followed are partly appears to be in India since the amounts allegedly drawn by resorting to forgery or lying in the Banks in India. For ready reference, sub-section (1) of Section-181, is extracted, which is as under:

> "181. Place of trial in case of certain offences:-- (1) Any offence of being a thug, or murder committed by a thug, of dacoity, of dacoity with murder, or belonging to a gang of dacoits, or of escaping from custody, may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the accused person is found."

8. Therefore, an offence can be inquired into or tried by a Court within

whose local jurisdiction the offence was committed or the accused person is found.

9. Similarly he points sub-section (4) of Section-181, which is as under:

> "(4). Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person."

10. A careful reading of both these provisions makes it clear that the offences so alleged can be enquired into or tried if they were committed in India. But, these two provisions do not deal with the offences, which have been committed in a foreign country.

11. Therefore, these two provisions have been brought to the notice of this Court by Sri O.Kailasanatha Reddy, the learned Amicus curiae, are not useful, nor applicable to the present set of facts.

12. Similarly, Sri V.Pattabhi, another learned Amicus Curiae, while assisting the Court pointed out that the enquiry and the trial shall have to be some times be understood as one and referable to taking cognizance of an offence. Therefore, he points out that since enquiry is also contemplated in the above-referred two provisions, it may have to be treated as investigation also.

13. Section 2 (h) Code of Criminal Procedure defines “investigation” which reads thus:

> “Investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized in this behalf.”

14. Investigation is an action with regard to an offence. Investigation is done by an agency called “police”, but, whereas enquiry can be done even by a Court. For example, a statement recorded by a Magistrate or a any proceeding a case is referred to the police by the Court for investigation under section 156 (3) Cr.P.C. Therefore, the expression “enquiry” is an enlarged form of investigation. In other words, “enquiry” can be made even by the Court, by the Police together, or simultaneously, but whereas “investigation” can be done only by the police that is either on its own accord or at the instance of the Court.

15. But, it has to be seen that under Section 188 of the Criminal Procedure Code, the offence can be enquired into with the prior sanction by the Central Government.

16. In this context, it is necessary to have a look at Sections 179 and 197 Cr.P.C., which deals with the cognizance of an offence that the previous sanction of the Central Government or the Statement Government, as the case may be. If the view expressed Mr.V.Pattabhi, the learned Amicus Curiae, is to be accepted, the same language as used in Section 197/177 Cr.P.C., could and

should have been used in other provisions of Sections like 179, 181 and 188 Cr.P.C.

17. Further more, the very object of Section 188 of Cr.P.C., appears to be that in order to meet two particular contingencies; *firstly*, about the offence committed by the Indians in a foreign country or by a foreigner in India and *secondly*, in both the contingencies, prior sanction of the Central Government is imperative, as postulated under Section 188 of the Cr.P.C. Otherwise, the very purpose and object of incorporating Sections 179 and 188 Cr.P.C., is wholly superfluous.

18. The learned Government Pleader for Home contended that the police have got power to investigate under Section 166-A and 166-B Cr.P.C. These two provisions are obviously not applicable for the simple reason that they are only meant for the purpose of examining the individuals at a foreign country; that too, upon an order passed by a Court in India and a letter addressed to the Court of other country. Therefore, those two provisions are not presently available. Even if these two provisions are applicable only for those cases where the offences are taken place in India. Therefore, the only provisions that hold in field is Section 188 of Cr.P.C., which specifically postulates that the permission of the Central Government is essential either to proceed with the enquiry let alone trial which comes later.

19. Further more, it is on record that the Consulate General of India, Jeddah, Saudi Arabia, also addressed a letter, dated 03-01-2005,

which reads as follows:

"Fax No.0091 – 40 2323 4524

With reference to the request made by Mr. Syed Asghar dated 01.11.2004 in case registered in Cr. No.115 of 2004 U/s. 420, 468 and 371 of I.P.C being investigated in CCS, Hyderabad City Police. We have further investigated the matter with the local police here in Jedda, Saudi Arabia no such case has been registered with the local police nor with the Consulate General Office of India in Jedda, Saudi Arabia.

The allegations made by Mr. Alawi Baharoon Jamallalayei of Baharoon Development Corporation against Mr. Syed Asghar in the above referred case are totally false.

This is for favour of information and necessary action.

Sd/-

(V/C, Consular),

Consulate General of India,

Jedda, Saudi Arabia."

20. This fact was submitted in the counter-affidavit. But, however, in the Counter-affidavit, it is stated that upon receipt of fax message, the department has verified the documents submitted by the Baharoon Development Corporation at the time of filing the complaint and that the respondent had also consulted telephonically with the said Baharoon Development Corporation with regard to the genuinety of the said fax message and that some material also appears to have

been supplied to the petitioner. The police were informed by the Consulate General of India, Jeddah, Saudi Arabia, that some funds were withdrawn by the petitioner by forging the signatures. Even in such case also, unless the mandatory procedure prescribed under Section 188 Cr.P.C., is followed, any steps that have been taken by the police are of no use. Significantly, there appears to be no written complaint by the Baharoon Development Company at Jedda to the police here in India.

21. This is absolutely contrary to the report of the Consulate General of India.

22. Therefore, the alleged information and complaint made by the Baharoon Development Corporation, Jeddah, Saudi Arabia, upon the telephonic conversion by the police at Hyderabad appears to be doubtful.

23. Therefore, for the foregoing reasons, since the procedure that is being adopted is totally inconsistent and contrary to the mandatory provisions i.e., Section 188 of the Cr.P.C., the writ petition is liable to be allowed.

24. Further, the investigation that is going on is in abuse of the process of law.

25. There is any amount of misuse of the powers conferred under the statute by the police. Necessary safeguards have to be provided and such safeguards have been provided in the shape of Section 188 of the Cr.P.C., to avoid misuse

26. There is a definite and crystalised procedure prescribed under Section 188 of the Cr.P.C., which has to be necessarily read and followed.

27. For the foregoing reasons, the Writ Petition is allowed, at the stage of admission, and the F.I.R. in Crime No.115 of 2004 on the file of Central Crime Station, Hyderabad – 4th respondent herein, is quashed. Consequently all the incidental actions of the third and fifth respondents in freezing the Bank A/c. Number bearing No.04805 ICICI Bank, Secunderabad Branch, and A/c. No.16991, Bank of Baroda, S.D. Road Branch, Secunderabad, shall also held to be set aside.

28. However, the third and fifth respondents are at liberty to follow the procedure prescribed under Section 188 of the Code of Criminal Procedure. In the circumstances, there shall be no order as to costs.

29. The Registry is directed to send a copy of this order to the ICICI Bank, Secunderabad Branch, and Bank of Baroda, S.D. Road Branch, Secunderabad.

28. Before parting with this case, this Court places on record its deep sense of appreciation for the valuable assistance rendered by Sri O.Kailasanatha Reddy and Sri V.Pattabhi, Advocates of this Court, as Amicus Curiae.

D.S.R. VARMA, J

Date 08TH APRIL, 2005

Note: L.R.Copy to be marked.

Issue C.C. in three days.

(B/o)

DVS/KRK

To:

One fair copy to the Hon'ble Mr.Justice D.S.R.Varma (for his lordships kind perusal)

1.The Government of Andhra Pradesh rep by its Principal Secretary, Home Department, A.P. Secretariat, Hyderabad
2.The Director General and Inspector General of Police, Lakdi-ka-pul, Hyderabad
3.The City Commissioner of Police, Hyderabad, Basheerbagh, Hyderabad
4.The Inspector of Police, Central Crime Station, Control Room, Hyderabad
5.The Station House Officer, Musheerabad, Police Station, Musheerabad,

Hyderabad

6.Two CCs to the Government Pleader for Home, High Court Buildings, Hyderabad (OUT).

7.Two CD copies.

8.The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

9.The Secretary, A.P. Advocates Association Library, High Court Buildings, Hyderabad.

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THE HONOURABLE SRI JUSTICE D.S.R.VARMA

W.P.NO.3617 OF 2005

08TH APRIL, 2005